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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/782,379	02/19/2004	Roger Warren	486.0047USU	3589

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EXAMINER

HALE, GLORIA M

ART UNIT	PAPER NUMBER
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3765

DATE MAILED: 08/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/782,379

Applicant(s)

WARREN ET AL.

Examiner

Gloria Hale

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 6-13-06 RCE Amendment.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 and 8-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 8-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claims 1-6 and 8-24 are pending.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6 and 8-24 are rejected under 35 U.S.C. 102(b) as being anticipated by Alexander et al (US 3,070,870)

Alexander et al discloses an undergarment, the brassiere, as seen in figure 8 including a support layer 17, a transparent outer layer 7 and an intermediate layer 19 that adheres with heat fusing when an adhesive resin applied to layer 19 fuses with the thermoformable materials including lace, tulle and net. The intermediate layer is "for fusing" as broadly claimed in its intended use statement since it holds the adhesive resin that is applied thereto. All of the materials are transparent and sheer as claimed. The support layer is a material layer that provides support as broadly claimed since any additional layer would provide support. The layers are seamless and overlies each other. The material layers are resilient in that they bend and flex. The pattern of the net, lace and tulle can be seen through each other layer since the layers are sheer and transparent. (See Alexander et al, col. 7, lines 44-64; col. 7, line 66- col. 8, line 9 and 38-69; figures 8 and 9). Alexander et al discloses the method steps in claims 14-18 to form the structure as discussed above.

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: The added language that the support material is not specifically detailed in the specification other than a LYCRA material has been used. The specification did not disclose in the original specification that enough LYCRA spandex was used to make the material of the support layer elastic.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 8,13,18 and 19 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The newly added language to the specification and claims contains new matter. The addition of the recitation that the "support layer may be shaped to only extend under and along a lower and side breast profile of a wearer's breasts when the undergarment is worn" is new matter. The support layer 30 is shown in figure 1 as also extending into the front area of the wearer's breast and is more so on the front than on the under side of the breast and more so on the front than on the lower and side breast profile. The original specification on page 7 beginning on line 16 does not provide any language to suggest

that the added language is not new matter. The original figure 1 and claim 8 also do not provide enough support for the added claim language and language to the specification that the support layer is "only" to extend under and along a lower and side breast profile of a wearer's breasts.. The original specification stated that the support layer is secured only in areas essential for breast support such as on page 6, lines 1-2 and that is "Comfortably against the breasts" as on page 5, lines 25-27. It is clear that applicant originally disclosed the support area 30 on the front of the wearer's breasts as seen in figure 1. Therefore, the amendment to the specification and claims adds new matter that is narrower and more limiting than applicant's original specification and claims. There also needs to be more support in the original specification that the entire support material was to be elastic and not that it just contain a small amount of Lycra spandex. IF applicant did not originally disclose the support layer as being an elastic material then it is not clear as to whether the material contained enough LYCRA spandex to be elastic. Additionally if the support layer is fused to the other layers it is not clear as to what benefits an elastic support layer would provide.

Response to Arguments

Applicant's arguments filed 6-13-06 have been fully considered but they are not persuasive. The Examiner disagrees with applicant's assertion that the tulle(lace) layer would not provide support. AS previously stated the lace tulle layer would provide support as broadly claimed in that any additional layer would provide support to another layer. This would be even more supportive since the layer would hold the resin

adhesives disclosed by Alexander et al which would provide additional support.

Applicant has not claimed a specific support layer structure to overcome the support layer characteristics of Alexander et al. Alexander also did not specifically disclose the net as being stiff. Additionally when the adhesive resin is applied to all of the layers the layers would all be molded and supportive. Applicant needs to add structural limitations to the support layer of claim 1 to differentiate it from any layer which would provide support. Also the intermediate layer needs to be defined as an adhesive layer instead of as just a layer "for adhering or fusing" which is intended use language that does not specifically limit the structure to adhesive layer materials. Alexander et al's layer is a layer "for adhering and fusing" as broadly claimed in that it holds the resin materials that are used to adhere the layers when fused. Applicant has not claimed any specific structure that provides the adhesion any more than the Alexander et al layer. The interlining structure itself must be claimed to include the adhesive materials as part of the layer itself more so that just the addition of an adhesive thereon or therein. It is not clear as to how applicant's support layer is elastic and would remain elastic when it is fused to the other layers.

The additional language to claim 8 that the support layer is to only extend under and along a lower and side breast profile of the wearer's breasts is considered to be new matter as discussed in the above rejection. The arguments in regard to Alexander are moot in that the amendments to the specification and claims are considered to be new matter. Alexander discloses an adhesive or fusing layer as broadly claimed in that the intermediate layer of Alexander is provided with the resin

adhesive materials thereon which would then be on the layer and provided as broadly claimed. Applicant has not claimed a specific adhesive material that is manufactured as a adhesive fabric layer or film that is adhesive in itself without the addition of an adhesive after the material was manufactured. Alexander et al broadly discloses the cutting of the brassiere pattern from the fused fabric layers to make up the brassiere garment.

The intermediate layer is cut which holds the adhesive materials and is therefore the step of “ (b) applying an adhesive or fusing layer to said support layer” as broadly claimed. The actual adhering or fusing of the support layer is (d) which in Alexander et al would be the application of the resin adhesive materials. Applicant did not claim the application of a material layer that is an actual adhesive film material. Alexanders materials extend into the areas to provide the support as claimed. The “only” amendment is new matter as discussed above. Alexander et als layer s are applied to a “portion” of the bra as broadly claimed in that the “portion” is the cup portion. Applicant is arguing more than what has been claimed and is reading limitations into the claims. The claims must be given their broadest reasonable interpretation. The original claims and specification did not clearly describe the support layer as being elastic. It is also not clear as to how applicant’s intermediate or support layers would be elastic after they are fused together.

In conclusion, the exact structure of the invention needs to be claimed such as accurately describing the adhesive fusible layers wherein the adhesive layers is not a layer where an adhesive is added to the materials.

Conclusion

This is a continuation of applicant's earlier Application.. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gloria Hale whose telephone number is 571-272-4984. The examiner can normally be reached on Tues.-Friday.

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Gloria Hale
Primary Examiner
Art Unit 3765
